

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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AN ANALYTICAL STUDY OF CUSTODIAL VIOLENCE AS A VIOLATION OF HUMAN RIGHTS

AUTHORED BY - DINESH KUMAR R & SAROJA DEVI T

INTRODUCTION

Custodial violence represents one of the gravest violations of human rights and constitutes a serious abuse of State authority. It refers to any form of physical, mental, or psychological harm inflicted upon a person while he or she is in the custody of police, prison authorities, or other law enforcement agencies. Such violence may occur during arrest, interrogation, detention, or imprisonment and includes torture, assault, illegal detention, sexual abuse, intimidation, and custodial deaths. In a democratic society governed by the rule of law, the State is under a constitutional and moral obligation to protect the dignity, liberty, and life of every individual, including those accused or convicted of crimes. Therefore, custodial violence stands in direct contradiction to the principles of justice, equality, and human dignity.

India, being a constitutional democracy, guarantees several fundamental rights to individuals under Part III of the Constitution. Articles 20, 21, and 22 provide safeguards against arbitrary arrest, self-incrimination, and illegal detention. The Supreme Court of India has repeatedly emphasized that prisoners and detainees are not deprived of their basic human rights merely because they are in custody. The right to life under Article 21 has been interpreted broadly to include the right to live with dignity and protection against torture, cruel, inhuman, or degrading treatment. Despite these constitutional guarantees, incidents of custodial violence continue to occur across different parts of the country, exposing serious weaknesses in law enforcement and accountability mechanisms.

The persistence of custodial violence reflects deeper structural and institutional problems within the criminal justice system. Factors such as political interference, lack of police reforms, inadequate training, pressure to secure confessions, weak oversight mechanisms, and delays in investigation and prosecution contribute significantly to the continuation of custodial abuse. Marginalized communities, economically weaker sections, and socially disadvantaged groups are particularly vulnerable to torture and ill-treatment in custody. This raises concerns not only regarding human rights violations but also regarding social justice and equality before the law.

OBJECTIVES OF THE STUDY

The objectives of the present study are:

1. To examine the concept and nature of custodial violence in India.
2. To analyze custodial violence as a violation of fundamental and human rights.
3. To study the constitutional and statutory safeguards available against custodial violence.
4. To examine the role of the judiciary in preventing and addressing custodial violence.
5. To analyze international human rights standards relating to custodial torture and violence.
6. To identify the causes and consequences of custodial violence.

HYPOTHESIS FORMULATED

Primary Hypothesis

Custodial violence in India persists primarily due to weak enforcement of existing legal safeguards and lack of effective accountability mechanisms within law enforcement agencies.

Secondary Hypotheses

1. Despite constitutional protections under Articles 20, 21, and 22, custodial violence continues because of systemic loopholes in implementation.
2. Judicial guidelines laid down in *D.K. Basu v. State of West Bengal* have reduced custodial abuse to some extent, but ineffective compliance limits their practical impact.
3. Marginalized and economically weaker sections are more vulnerable to custodial violence than privileged groups.
4. The absence of a specific anti-torture legislation contributes significantly to the continuation of custodial violence.
5. Strengthening independent investigation mechanisms and police reforms can reduce custodial abuse.
6. Delay in investigation and prosecution encourages a culture of impunity among law enforcement officials.
7. Lack of proper human rights training and sensitization programs contributes to custodial abuse.

RESEARCH QUESTIONS

1. What is the meaning and scope of custodial violence under Indian law and international human rights standards?
2. How does custodial violence violate Articles 20, 21, and 22 of the Constitution of India?
3. What statutory safeguards exist under criminal law and evidence law to prevent custodial torture?
4. How effective are judicial guidelines in preventing custodial abuse?
5. Why does custodial violence continue despite constitutional and legal safeguards?

RESEARCH METHODOLOGY

The present study is doctrinal and analytical in nature. The research is based primarily on secondary sources such as constitutional provisions, statutes, judicial decisions, textbooks, journal articles, Law Commission Reports, NHRC reports, and online legal databases.

The study examines constitutional safeguards, statutory provisions, judicial responses, and international standards relating to custodial violence. The research methodology includes analysis of case laws, comparative examination of legal provisions, and critical evaluation of existing safeguards and their implementation.

REVIEW OF LITERATURE

The issue of custodial violence has received significant attention from legal scholars, human rights activists, and judicial authorities. Constitutional law scholars have emphasized that custodial torture violates Article 21, which guarantees the right to life and personal liberty. Human rights jurists such as Dr. Upendra Baxi have criticized custodial violence as a manifestation of structural injustice within the criminal justice system.

The Law Commission of India, particularly in its 113th and 273rd Reports, recommended enactment of a specific anti-torture law to address custodial abuse effectively. The NHRC has repeatedly highlighted increasing cases of custodial deaths and emphasized the need for accountability, transparency, and independent investigations.

Judicial pronouncements have significantly contributed to the development of safeguards against custodial violence. In *D.K. Basu v. State of West Bengal*, the Supreme Court laid down detailed guidelines regarding arrest and detention procedures. In *Joginder Kumar v. State of U.P.*, the Court held that arrest should not be made routinely without justification. In *Nilabati Behera v. State of Orissa*, compensation for custodial death was recognized as a public law

remedy for violation of fundamental rights.

LEGAL AND CONSTITUTIONAL FRAMEWORK

Constitutional Safeguards against Custodial Violence

The Constitution of India provides strong safeguards against arbitrary arrest, detention, and custodial abuse. Fundamental rights under Articles 14, 19, 20, 21, and 22 collectively protect human dignity and liberty.

Article 14 – Right to Equality

Article 14 guarantees equality before law and equal protection of laws. It prohibits arbitrary exercise of power by State authorities. Custodial violence violates Article 14 because it subjects detainees to discriminatory and inhuman treatment. The judiciary has consistently held that arbitrariness is opposed to equality and any abuse of State power violates constitutional guarantees.

Article 19 – Protection of Freedoms

Article 19 guarantees freedoms such as speech, movement, and association. Though lawful restrictions may be imposed during arrest or detention, such restrictions must follow due process. Custodial torture imposes unlawful restraints beyond permissible constitutional limits and therefore violates Article 19.

Article 20 – Protection in Respect of Conviction for Offences

Article 20(3) protects individuals from self-incrimination. It provides that no person accused of an offence shall be compelled to be a witness against himself. Torture or coercive interrogation methods used to extract confessions directly violate this constitutional safeguard.

Article 21 – Right to Life and Personal Liberty

Article 21 is the foundation of human rights jurisprudence in India. It guarantees protection of life and personal liberty except according to procedure established by law. Judicial interpretation has expanded Article 21 to include the right to live with dignity and freedom from torture. Custodial violence constitutes a direct violation of Article 21 because it attacks human dignity and bodily integrity.

Article 22 – Protection against Arbitrary Arrest and Detention

Article 22 provides procedural safeguards including the right to be informed of grounds of arrest, right to consult a lawyer, and production before a magistrate within twenty-four hours. These safeguards are intended to prevent illegal detention and custodial abuse.

Provisions under the Bharatiya Nyaya Sanhita (BNS)

The Bharatiya Nyaya Sanhita contains several provisions relevant to custodial violence even though it does not separately define custodial torture.

Offences Relating to Hurt and Grievous Hurt

The BNS criminalizes voluntarily causing hurt or grievous hurt, including causing injury to extort confession or information. Torture by police officials during interrogation attracts criminal liability under these provisions.

Wrongful Confinement

Wrongful restraint and wrongful confinement are punishable offences. Illegal detention without lawful authority amounts to violation of personal liberty.

Offences by Public Servants

Public servants who abuse their authority, frame incorrect records, or intentionally cause injury may be prosecuted under relevant provisions of the BNS.

Custodial Death

Where custodial violence results in death, offences such as culpable homicide, murder, or causing death by negligence may apply depending upon the facts of the case.

Sexual Violence in Custody

Sexual assault, harassment, and rape committed by persons in authority are treated as aggravated offences carrying stricter punishment.

Provisions under the Bharatiya Nagarik Suraksha Sanhita (BNSS)

The BNSS lays down procedural safeguards to prevent arbitrary arrest and custodial abuse.

Arrest Procedures

The arrested person must be informed of grounds of arrest, and arrest memo documentation is mandatory. The right to inform relatives or friends about arrest is also recognized.

Production before Magistrate

Every arrested person must be produced before the nearest magistrate within twenty-four hours.

This judicial scrutiny helps prevent illegal detention and torture.

Medical Examination

Medical examination of arrested persons acts as an important safeguard against custodial violence by documenting injuries.

Right to Legal Assistance

The BNSS recognizes the right to consult a legal practitioner and receive legal aid, thereby reducing the possibility of coercion and forced confessions.

Indian Evidence Law and Custodial Violence

Evidence law plays an important role in addressing custodial violence.

Burden of Proof

Ordinarily, the prosecution must prove guilt beyond reasonable doubt. However, in custodial violence cases, courts may shift the burden to custodial authorities where injuries or death occur in custody.

Admissibility of Confessions

Confessions made to police officers or obtained through coercion are generally inadmissible. Confessions must be voluntary and recorded before a magistrate.

Medical and Documentary Evidence

Medical reports, injury certificates, post-mortem reports, arrest records, and CCTV footage are crucial in establishing custodial violence.

Role of the National Human Rights Commission (NHRC)

The NHRC was established under the Protection of Human Rights Act, 1993. It plays an important role in addressing custodial violence.

The Commission has power to inquire into custodial deaths, torture, and abuse. It may take suo motu cognizance of serious incidents and call for reports from State authorities. Cases of custodial death or rape must be reported to the NHRC within twenty-four hours.

The NHRC issues guidelines regarding arrest procedures, post-mortem examinations, and compensation to victims. Though its recommendations are not binding, they carry persuasive authority and promote accountability.

International Human Rights Instruments

Universal Declaration of Human Rights (UDHR), 1948

The UDHR recognizes the right to life, liberty, and security of person and prohibits torture, cruel, inhuman, or degrading treatment.

International Covenant on Civil and Political Rights (ICCPR), 1966

The ICCPR guarantees protection against torture and arbitrary detention and requires humane treatment of persons deprived of liberty.

Convention Against Torture (CAT), 1984

The Convention Against Torture requires States to criminalize torture, investigate allegations, punish offenders, and provide compensation to victims. Although India has signed the Convention, it has not yet enacted comprehensive anti-torture legislation.

Custodial violence therefore remains one of the most serious challenges to human rights and constitutional governance in India. Effective implementation of constitutional safeguards,

judicial guidelines, police reforms, and international standards is essential to prevent abuse and ensure accountability within the criminal justice system.

JUDICIAL APPROACH AND LANDMARK JUDGMENTS

Role of Judiciary in Protecting Human Rights

The judiciary plays a vital role in protecting and enforcing human rights in India. As the guardian of the Constitution, the courts ensure that the fundamental rights guaranteed under Part III are protected against arbitrary State action. Judicial intervention has been particularly significant in cases involving custodial violence, illegal detention, torture, and abuse of police powers.

Guardian of the Constitution

Under Articles 32 and 226 of the Constitution, the Supreme Court and High Courts have the power to enforce fundamental rights through writ jurisdiction.

Article 32 empowers the Supreme Court to issue writs for enforcement of fundamental rights.

Article 226 empowers High Courts to issue writs not only for enforcement of fundamental rights but also for other legal rights.

Dr. B.R. Ambedkar described Article 32 as the “heart and soul” of the Constitution because it provides an effective remedy against violation of rights.

In *Kesavananda Bharati v. State of Kerala*, the Supreme Court held that judicial review forms part of the basic structure of the Constitution. This judgment strengthened constitutional supremacy and ensured that fundamental rights cannot be destroyed even through constitutional amendments.

Expanding the Scope of Article 21

The judiciary has significantly expanded the meaning of Article 21, which guarantees the right to life and personal liberty.

Initially, in *A.K. Gopalan v. State of Madras*, Article 21 was interpreted narrowly. However, the judicial approach changed in *Maneka Gandhi v. Union of India*, where the Court held that the procedure established by law must be fair, just, and reasonable.

The Court expanded Article 21 to include:

- Right to live with dignity
- Right to fair procedure

- Right to legal aid
- Right to speedy trial
- Right to privacy
- Protection against torture and inhuman treatment

This judgment transformed Indian human rights jurisprudence and laid the foundation for judicial protection against custodial violence.

Protection Against Custodial Violence

The judiciary has consistently condemned custodial torture and police brutality as violations of constitutional rights.

In *D.K. Basu v. State of West Bengal*, the Supreme Court declared custodial torture to be a direct violation of Article 21 and laid down mandatory guidelines to regulate arrest and detention procedures.

The Court introduced several safeguards, including:

- Preparation of arrest memo
- Medical examination of detainees
- Right to inform relatives or friends
- Production before Magistrate within 24 hours

Right to consult a lawyer

The judgment also recognized compensation as a constitutional remedy in custodial death cases. This case remains the foundation of custodial safeguards in India.

Public Interest Litigation (PIL)

The judiciary introduced Public Interest Litigation to make justice accessible to poor and marginalized sections of society.

In *S.P. Gupta v. Union of India*, the Supreme Court relaxed the traditional rule of locus standi, allowing public-spirited individuals to approach courts on behalf of disadvantaged groups.

Through PIL, courts have protected:

- Prisoners' rights
- Women's rights
- Children's rights
- Environmental rights
- Rights of bonded labourers

- PIL has become an important tool for protection of human rights and accountability of State authorities.

Compensation as a Public Law Remedy

The judiciary developed the principle that the State must compensate victims where fundamental rights are violated.

In *Nilabati Behera v. State of Orissa*, the Supreme Court held that compensation can be awarded under public law for custodial deaths and violations of Article 21.

The Court rejected the defence of sovereign immunity and emphasized that constitutional remedies are available when State authorities violate human rights.

This judgment established the concept of constitutional tort liability in India.

Protection of Prisoners' Rights

The judiciary has repeatedly held that prisoners do not lose their fundamental rights merely because they are in custody.

In *Sunil Batra v. Delhi Administration*, the Supreme Court prohibited inhuman treatment, torture, and unjustified solitary confinement of prisoners.

The Court emphasized that prison administration must function within constitutional limits and respect human dignity.

Incorporation of International Human Rights Norms

Indian courts have relied upon international human rights conventions when domestic law is silent or inadequate.

In *Vishaka v. State of Rajasthan*, the Supreme Court relied on international obligations under CEDAW to frame guidelines against workplace sexual harassment.

This demonstrates judicial willingness to harmonize domestic law with international human rights standards.

Judicial Review of Arbitrary State Action

The judiciary exercises judicial review to prevent abuse of executive power and arbitrary State action.

Courts ensure:

- Protection against illegal detention
- Prevention of arbitrary arrest
- Fair investigation and fair trial
- Protection against misuse of preventive detention laws

- Accountability of public authorities

Judicial review acts as a constitutional safeguard against custodial violence and abuse of power.

Guidelines Issued in D.K. Basu Case

The Supreme Court in D.K. Basu v. State of West Bengal issued mandatory guidelines to prevent custodial torture.

Important Guidelines

1. Identification of Police Officers

Police officers carrying out arrest must wear clear identification and name tags.

2. Preparation of Arrest Memo

An arrest memo must be prepared at the time of arrest and signed by:

- The arrested person
- At least one witness
- The memo must contain date and time of arrest.

3. Right to Inform Relative or Friend

The arrested person has the right to inform a relative or friend regarding arrest and detention.

4. Entry in Station Diary

Details of arrest and detention must be recorded in police records.

5. Medical Examination

Medical examination must be conducted at the time of arrest and every 48 hours during detention.

6. Copies to Magistrate

All arrest-related documents must be forwarded to the Magistrate.

7. Right to Meet Lawyer

The detainee has the right to consult a lawyer during interrogation.

8. Production Before Magistrate

The arrested person must be produced before a Magistrate within twenty-four hours.

- Consequences of Non-Compliance
- Failure to follow these guidelines may result in:
 - Departmental action
 - Contempt of court proceedings
 - Criminal liability

These guidelines strengthened accountability and recognized custodial violence as a serious human rights violation.

Compensation Jurisprudence

Compensation jurisprudence refers to the principle that when the State violates fundamental rights, especially the right to life and personal liberty, it becomes liable to pay monetary compensation.

This remedy is:

- Independent of criminal prosecution
- Independent of civil damages
- Based on constitutional liability
- Analytical Framework

From Sovereign Immunity to State Accountability

Earlier, the State could avoid liability through the doctrine of sovereign immunity. The judiciary rejected this defence in custodial violence cases.

Constitutional Tort

Custodial violence is treated as a constitutional wrong or constitutional tort.

Strict Liability Principle

Where fundamental rights are violated, courts may award compensation without requiring lengthy civil proceedings.

Human Rights Dimension

Compensation jurisprudence recognizes:

Right to dignity

Bodily integrity

State responsibility for persons in custody

It also aligns with international human rights standards under the ICCPR and the Convention Against Torture.

Strengths

- Provides immediate relief to victims' families
- Strengthens constitutional supremacy
- Promotes State accountability

Limitations

- Compensation is often inadequate
- No uniform standard for assessment
- Delays in implementation

- Weak criminal accountability

Relevant Case Laws

D.K. Basu v. State of West Bengal

Principle:

Custodial torture violates Article 21. The Court issued mandatory arrest and detention guidelines and recognized compensation as a constitutional remedy.

Importance:

Foundation case on custodial safeguards and police accountability.

Nilabati Behera v. State of Orissa

Principle:

The State is liable for custodial death. Sovereign immunity cannot be used as a defence.

Importance:

Established constitutional compensation jurisprudence.

CAUSES, FORMS, AND IMPACT OF CUSTODIAL VIOLENCE

Police Brutality and Abuse of Power

Police brutality refers to unlawful or excessive use of force by police authorities against individuals. Abuse of power occurs when police officials misuse authority for coercion, punishment, intimidation, or discrimination.

Such conduct violates Article 21 of the Constitution and undermines democratic governance.

- Forms of Police Brutality
- Excessive Physical Force
- Third-degree torture
- Assault during arrest
- Unnecessary firing
- Custodial Violence
- Torture during interrogation
- Denial of medical treatment
- Custodial deaths
- Sexual Violence
- Custodial rape
- Sexual harassment
- Forced nudity

In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, the Supreme Court held that custodial rape is a grave violation of human dignity.

Fake Encounters

Extra-judicial killings without due process violate constitutional protections.

In *People's Union for Civil Liberties v. State of Maharashtra*, the Court issued guidelines for independent investigation of encounter deaths.

- Illegal Detention
- Arrest without justification
- Fabrication of evidence
- Prolonged detention
- Causes of Custodial Violence
- Pressure to solve cases quickly
- Political interference
- Weak accountability mechanisms
- Lack of human rights training
- Colonial policing mindset
- Public demand for instant justice
- Socio-Economic and Political Factors
- Custodial violence disproportionately affects:
 - Poor individuals
 - Scheduled Castes and Scheduled Tribes
 - Minority communities
 - Illiterate and legally unaware persons
 - Economic inequality and lack of access to legal representation increase vulnerability to abuse.

Political interference also contributes significantly. In ***Prakash Singh v. Union of India***, the Supreme Court directed structural police reforms to reduce political influence and ensure accountability.

- Torture, Custodial Death, and Sexual Violence
- Torture in Custody
- Torture includes physical and psychological abuse used to extract confession or intimidate detainees.
- Common methods include:

- Beating
- Electric shocks
- Sleep deprivation
- Psychological humiliation
- Such practices violate Articles 20(3) and 21 of the Constitution.
- Custodial Death
- Custodial deaths may result from:
 - Severe torture
 - Negligence
 - Denial of medical care
 - Suicide caused by harassment

In *Nilabati Behera v. State of Orissa*, the Court recognized compensation as a remedy for custodial death.

Sexual Violence in Custody

Women, children, and transgender persons are particularly vulnerable to custodial sexual abuse.

The landmark *Tukaram v. State of Maharashtra* led to major reforms in rape laws and strengthened protections against custodial sexual assault.

Impact on Victims and Families

- Economic Impact
- Families often lose their primary earning member, resulting in financial hardship.
- Psychological Trauma

Victims and families suffer:

- Depression
- Fear
- Emotional distress
- Long-term trauma
- Social Consequences
- Loss of trust in law enforcement
- Social stigma

- Weakening of democratic values

FINDINGS, SUGGESTIONS, AND CONCLUSION

Major Findings of the Study

1. Custodial Violence is Systemic

Custodial violence reflects institutional weaknesses rather than isolated misconduct.

2. Marginalized Groups are Most Affected

Victims are largely drawn from poor and socially disadvantaged communities.

3. Weak Implementation of Safeguards

Despite constitutional protections and judicial guidelines, implementation remains inadequate.

4. Low Accountability

Conviction rates in custodial death cases remain very low, encouraging impunity.

6. Political Interference

Political control over police functioning weakens professional independence.

7. Inadequate Investigative Infrastructure

Lack of forensic facilities and reliance on confession-based investigation encourage coercive methods.

8. Psychological and Social Consequences

Custodial violence creates long-term trauma and weakens public confidence in the justice system.

Suggestions and Reforms

Legal Reforms

- Enact a comprehensive anti-torture law
- Ratify and implement the Convention Against Torture
- Strengthen procedural safeguards in criminal law

Police Reforms

Implement reforms directed in **Prakash Singh v. Union of India**

- Modernize investigation techniques
- Install CCTV cameras in all police stations

- Accountability Measures
- Independent investigation of custodial deaths
- Fast-track courts for custodial violence cases
- Personal liability of erring officers
- Human Rights-Based Policing
- Human rights training for police personnel
- Gender-sensitive custody procedures
- Greater transparency and public reporting

CONCLUSION

Custodial violence remains one of the gravest violations of human rights and constitutional governance in India. Torture, custodial deaths, and sexual violence continue despite constitutional safeguards and judicial intervention. The study reveals that custodial violence is deeply connected with institutional deficiencies, socio-economic inequality, political interference, and weak accountability mechanisms.

The judiciary has played a transformative role in protecting human rights through landmark judgments such as *D.K. Basu v. State of West Bengal*, *Nilabati Behera v. State of Orissa*, and *Prakash Singh v. Union of India*. These judgments strengthened procedural safeguards, compensation jurisprudence, and police accountability.

However, legal safeguards alone are insufficient unless effectively implemented. Stronger institutional accountability, independent investigation mechanisms, police reforms, human rights education, and strict enforcement of constitutional protections are essential to eliminate custodial violence and uphold the rule of law.